



## **REQUEST FOR PROPOSALS**

### **COST ALLOCATION PLAN**

**Due Date:** **Friday, September 11, 2015**  
**and time:** 4:00 pm (eastern standard time)

**RFP Number:** 2829-091115

**Mailing Address:** P O Box 230  
High Point NC 27261

**Delivery Address:** 211 S. Hamilton St.  
Purchasing Division, Room 215  
High Point, NC 27260

**Purchasing Contact:** Tarinda Chappell, Purchasing Manager  
**E-mail:** [tarinda.chappell@highpointnc.gov](mailto:tarinda.chappell@highpointnc.gov)  
**Phone:** 336-883-3222  
**Fax:** 336-883-3248

**Pre-Bid Conference:**  
**and time:** n/a

IF YOU NEED ANY REASONABLE ACCOMMODATION FOR ANY TYPE OF DISABILITY IN ORDER TO PARTICIPATE IN THE PROCUREMENT, PLEASE CONTACT PURCHASING AS SOON AS POSSIBLE

**VENDOR NAME:** \_\_\_\_\_

**(Please include this page in your RFP)**

**REQUEST FOR PROPOSALS**  
**RFP #2829-091115**  
**COST ALLOCATION PLAN**

The City of High Point's invites qualified consultants, having sufficient knowledge and experience in preparing and negotiating an indirect cost allocation plan in accordance with the specifications outlined in this Request for Proposal. The scope of services shall be for a maximum of 151 days beginning October 1, 2015 – February 29, 2016.

Sealed proposals will be received until **4:00 p.m., Friday, September 11, 2015** in the Purchasing Division, Second Floor of the High Point Municipal Building, Room 215, 211 S. Hamilton Street, High Point, NC 27260. Proposals are to be marked **"RFP # 2829-091115 Cost Allocation Plan"**. Proposers can mail their proposals as follows:

City of High Point  
Purchasing Division, Room 215  
P. O. Box 230 (27261)  
211 S. Hamilton St. (27260)  
High Point, NC

Copies of the Request for Proposal may be obtained from the Purchasing Division website - [http://www.highpointnc.gov/purchasing/current\\_bid\\_opportunities.cfm](http://www.highpointnc.gov/purchasing/current_bid_opportunities.cfm) or by calling (336) 883-3222.

Vendors who have not done business with the City of High Point previously and who have not registered using the City's on-line vendor registration process are highly encouraged to register at <https://www.highpointnc.gov/egov/vendor/>.

The City reserves the right to reject any and all proposals, as may in the judgment of the City, serve its best interest and the City further reserves the right to waive irregularities and informalities in any bid submitted.

The successful proposer shall be required to comply with all applicable equal employment opportunity laws and regulations, and all other applicable governmental laws and regulations as set forth by the City of High Point and the State of North Carolina.

The meeting facilities of the City of High Point are accessible to people with disabilities. If you need special accommodations, call 336-883-3298, TDD # 336-883-8517, or the North Carolina Relay System (TDD #1-800-735-2962).

**In accordance with the Federal "Americans With Disabilities Act" (the Act), the City of High Point will not discriminate against individuals with disabilities, and will not do business with vendors who discriminate against such individuals in violation of the Act.**

This printed material will be provided in an alternative format upon request.

Tarinda Chappell, CLGPO  
Purchasing Manager

## **A. GENERAL INFORMATION**

### **1. INTRODUCTION**

The City of High Point's The City of High Point's invites qualified consultants, having sufficient knowledge and experience in preparing and negotiating an indirect cost allocation plan in accordance with the specifications outlined in this Request for Proposal. The scope of services shall be for a maximum of 151 days beginning October 1, 2015 – February 29, 2016.

### **2. BID QUESTIONS**

Questions concerning this RFP must be sent to Tarinda Chappell, Purchasing Manager no later than **12:00 p.m. on Wednesday, September 2, 2015**. Questions must be submitted via email to [tarinda.chappell@highpointnc.gov](mailto:tarinda.chappell@highpointnc.gov). No questions will be answered after this date.

### **3. BID OPENING/PROPOSAL DUE DATE**

Sealed proposals shall be mailed or delivered no later than **4:00 p.m. Eastern Standard Time, on Friday, September 11, 2015**, subject to the specifications, instructions, and conditions contained herein and attached hereto, will be received at the above office until the date and hour specified, local time prevailing. **There will not be a public bid opening.**

Any bid received after the announced time and date of opening, shall not be considered.

Bidders shall submit three (3) copies of the proposal, as outlined in this bid document Section B.

### **4. CONTRACT TERMS**

The scope of services shall be for a maximum of 151 days beginning October 1, 2015 – February 29, 2016.

### **5. LATE BIDS**

Any bid proposal received after the date and time in section three (3) above, shall not be considered, and will be returned unopened.

### **6. COMPETITIVE SELECTION**

The successful Proposer will be selected on a fair and rational basis, and the evaluation factors outlined below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the successful bidder. Award of a contract may be made without discussion with Proposers after responses are received. Proposals should, therefore, be submitted on the favorable terms. The City reserves the right to void the purchase order if the successful Proposer has not performed within the date specified by the Proposers response.

### **7. PAYMENT**

The City shall pay the Service Provider the total amount of RFP for the Service Provider's full provision of the Services.

**8. SALES TAX**

Sales Tax shall not be included in any proposed prices. The City of High Point is not tax exempt and will pay sales tax where applicable. Sales tax shall be invoiced as a separate item.

**9. MWBE**

Pursuant to General Statute 143-48 and Executive Order #77, the City of High Point invites and encourages participation in this procurement process by businesses owned by minorities, women, handicapped or disadvantaged persons.

**10. CONTRACTS**

It is recognized that the formal basis of any agreement between vendor and user will be a contract to be negotiated between parties rather than a proposal. In submitting proposals, vendors must indicate that they are prepared to complete a contract containing all the information submitted in their proposals. Vendors must also be prepared to meet the City's insurance requirements at the time the contract is awarded. Vendors must submit a sample of any of their own contracts related to software maintenance and licensing. Contractor shall be required to sign a City of High Point Purchases contract, a sample of which is included in this RFP.

**11. REJECTION OF BID**

The City of High Point reserves the right to reject any and all Proposals, to waive any informality in proposals received, to accept or reject any or all of the items in the proposal, and to award the contract in whole or in part and/or negotiate any or all items with individual Proposers if it is deemed in the City's best interest. Moreover, the City reserves the right to make no selection if proposals are deemed to be outside the fiscal constraint or not in the best interest of the City.

## **B. PROPOSAL FORMAT**

### **1. PROPOSAL PACKAGE EVALUATION CRITERIA**

Proposal package will be evaluated on the consultants ability to meet the requirements of this Request for Proposals. Some heavily weighted, specific evaluation criteria, among other factors, will include:

Respondents must meet the following criteria in order to be considered:

- Submittal of a completed Proposal by the due date;
- Include Page 1 in Proposal
- Include Attachment A
- Include Attachment B
- All requested information as specified

### **2. SUBMITTAL REQUIREMENTS**

Consultants that would like to be considered for providing the required services, please submit:

One (1) bound original Proposal. Please clearly identify it as the original. Two (2) bound, paper copies of your Proposal Package, including the cover letter-total of 3.

#### **mailed or hand-delivered to:**

City of High Point  
Purchasing Division, Room 215  
211 S. Hamilton Street (27260)  
PO Box 230 (27261)  
High Point, NC  
Attn: Tarinda Chappell, Purchasing Manager

### **3. SUBMITTAL PACKAGE CONTENT AND FORMAT**

Proposals should be prepared on two-sided 8 1/2 x 11 paper using minimum 10-point font, placed in a manila envelope with the words, "**Cost Allocation Plan**" clearly visible. The City will not consider mailed proposals that do not arrive prior to the proposal deadline.

## **C. RFP QUESTIONS**

1. Please respond to the following questions in the same sequence as they are listed:

Identify the legal entity that would enter into the contract with the City to include the following:

- a. Full legal name of vendor
- b. Address of company headquarters
- c. Address of local office (An office in the High Point metro area; If not in High Point, what is your nearest office location?)
- d. Type of business (sole proprietorship, partnership, or corporation)

- e. State where vendor is incorporated (i.e. North Carolina, Georgia, etc.)
  - f. Federal Employer Identification Number
  - g. Name and title of the person authorized to enter into a contract
- 2. Provide a list identifying the number of personnel and identifying key members of your vendor available to respond in the event the proposed contract is activated, including subcontractors who would be assigned to this project. For proposed subcontractors, please provide the name of each vendor, the office location, contact name and telephone number, and the services to be provided.
  - 3. State any conflicts of interest your vendor or any key individual may have with these projects.
  - 4. Provide a Proposal Fee in the format provided in **Attachment A for a total cost. This should include all expenses related to (All inclusive):**
    - a. Personnel Cost
    - b. Travel and Subsistence Expenses
    - c. Subcontractor Costs (if any)
    - d. Other Costs (e.g. office costs, etc.)
  - 5. List at least three (3) references of contracts in the past five (5) years similar to the scope and size of the project specified herein. Please list North Carolina local government clients. Include the following for each: contact information email address and phone number of the owner, date of contract, dollar amount, description of project, and identify any unresolved claims or disputes. Please use **Attachment B**.

#### **D. SELECTION PROCESS**

The City will conduct a fair and impartial evaluation of all submittals that are received in accordance with the provisions of this RFP. The Budget and Performance Manager and a selection committee will perform the evaluation. Interviews with vendors are not anticipated, but may be held at the option of the selection committee. The City reserves the right to obtain clarification of any point in a vendor's/team's Proposal Package or to obtain additional information. All vendors/teams who submit Proposal Packages will be notified of the selection committee's choice. Final approval of any selected vendor/team is subject to the action of City Council or appropriate City officials.

#### **E. EVALUATION CRITERIA**

Proposals in one (1) original and **two (2)** copies will be received from each offeror in a sealed envelope or package.

Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.

All proposals must be received by the City of High Point not later than the date and time specified on the cover sheet of this RFP.

Failure to respond to any requirements outlined in the RFP may disqualify the proposal.

At their option, the evaluators may request oral presentations or discussion with any or all offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.

Proposals will be evaluated according to completeness, content, experience with similar projects, ability of the offeror and its staff, and cost. The evaluators will randomly select at least three of offeror's references, but the evaluators' reserve the right to contact all the references listed, if information from the three references contacted warrant further inquiry. The failure of the offeror to list all similar contracts in the specified period may result in the rejection of the offeror's proposal. The evaluators may check all public sources to determine whether offeror has listed all contracts for similar work within the designated period. If the evaluators determine that references for other public contracts for similar contracts were not listed, the evaluators may contact the public entities to make inquiry into offeror's performance of those contracts and the information obtained may be considered in evaluating offeror's proposal. Award of a contract to one offeror does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous to the City of High Point.

In addition to any other evaluation criteria identified in the State agency's solicitation document, the agency shall, for purposes of evaluating proposed or actual contract performance outside of the United States, consider the following factors to ensure that any award will be in the best interest of the City of High Point:

- Total cost to the City of High Point
- Level of quality provided by the vendor
- Process capability across multiple jurisdictions
- Protection of the City of High Point information and intellectual property
- Availability of pertinent skills
- Ability to understand the City of High Point's business requirements and internal operational culture
- Risk factors such as the security of the State's information technology
- Relations with citizens and employees
- Contract enforcement jurisdictional issues

#### **F. PUBLIC RECORDS**

Upon receipt by the City, your Proposal is considered a public record except for material that qualifies as "Trade Secret" information under North Carolina General Statute 66-152 et seq. Proposal Packages will be reviewed by the City's Selection Committee, as well as other City staff and members of the general public who submit public record requests. To properly designate material as a trade secret under these circumstances, each vendor must take the following precautions: (a) any trade secrets submitted by a vendor should be submitted in a separate, sealed envelope marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Proposal," and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the envelope. Do not designate your proposed pricing as a trade secret.

In submitting a Proposal, each vendor agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the selection process and to any outside consultant or other third parties who serve on the Selection Committee or who are hired by the City to assist in the selection process. Furthermore, each vendor agrees to indemnify and hold harmless the City and each of its officers, employees and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the vendor has designated as a trade secret. Any vendor that designates its entire Proposal as a trade secret may be disqualified from the selection process.

#### **G. CONDITIONS AND RESERVATIONS**

Upon receipt of this proposal, the City reserves the right to meet with any or all consultants submitting proposals at any time prior to an award in order to assure that the successful proposal most nearly meets all goals and objectives. The right is further reserved to use any or all ideas presented in any response to this Request for Proposals, whether amended or not. Selection or rejection of the proposal does not affect this right. During the course of review and evaluation of proposals, the City further reserves the right to negotiate with the consultant whose proposal most closely meets the City's goals and objectives for this project, to amend that consultant's original proposal by additions or deletions.

#### **H. RFP Schedule**

This is to provide interested firms information about the schedule anticipated by the City. This is an estimate only and may change.

RFP Issue Date	Wednesday, August 19, 2015
RFP Due Date	Friday, September 11, 2015, 4:00 p.m.
Questions Due to Purchasing	Wednesday, September 2, 2015, 12:00 p.m.
Evaluate Proposals	Monday, September 14-Friday, September 18, 2015
Award of Proposal	Monday, September 21, 2015
Work Begins	Thursday, October 1, 2015
Work Completed	Friday, February 29, 2016 (as mutually agreed upon)

#### **I. SCOPE OF WORK**

The consultant will be expected to perform and carry out in a timely and professional manner the following services. Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they should be clearly identified in their proposal.

(1.) Work with selected City staff to define the purpose, uses and goals for an overhead cost allocation plan to ensure that the developed plan will be both accurate and appropriate for the City's current needs. This includes conducting interviews as needed to gain an understanding of the City's business processes and operations.

(2.) Develop and prepare a detailed Full Cost Allocation model to calculate the full costs of providing City services. Identify any unallowable costs under OMB Circular A-87 and prepare a cost allocation model in accordance with the principles of OMB Circular A-87.



(3.) Present “Draft” Cost Allocation Plans to City Management for staff review. Collect and document comments and concerns from staff. Following discussion with staff the consultant will make the agreed upon changes to the plan.

(4.) Present the revised draft study report to the City Council to facilitate their understanding of the study and its implications for the City. Make necessary adjustments as deemed appropriate. This presentation will be under the guidance and at the discretion of the City Manager.

(5.) Prepared final plans for both the Full Cost Allocation Plan and OMB Circular A-87 Plan. Provide three hard copies of the final plan as well as one electronic searchable Adobe PDF file.

(6.) Provide City staff with a copy of the electronic model utilized to prepare the plans so that updates can be performed internally each year.

(7.) Consult with City staff should the need arise to defend the cost allocation plan as a result of audits or other external challenges.

(8.) The Consultant should recommend other tasks deemed appropriate to achieve the objectives of this task.

#### Assistance Available to Awarded Consultant from the City

The City will make available to the **awarded consultant** all necessary information and material pertinent to the preparation of the cost allocation plan, to include:

- Approved Annual Budget (PDF)
- Comprehensive Annual Financial Report (PDF)
- Excel Spreadsheet of all Expenditures by Department
- Number of accounting transactions
- Number of accounts payable distribution lines
- Basis for Professional Services - Audit Fee
- Number of vehicles assigned
- Number of full time employees
- Number of lines on purchase orders issued
- Number of contracts issued
- Gas charges
- Postage charges
- Vehicle maintenance charges
- City Attorney’s percentage of time
- Information Technology percentage of time
- Unemployment charges cost by department
- Building maintenance charges

- Property insurance analysis
- Risk management services
- Schedule of Federal and State assistance
- Statement of insured values
- Employee gross wages by accounting unit for overhead departments
- Fixed asset information
- Accounting unit master list
- Lease purchase interest expense by department
- Other mutually agreed upon information requested by the vendor

**PROPOSAL FORM  
COST ALLOCATION PLAN  
RFP 2829-091115**

**Vendor Name:** \_\_\_\_\_

**Vendor Address:** \_\_\_\_\_

**Vendor Contact:** \_\_\_\_\_

**Vendor Contact Phone Number :** \_\_\_\_\_

**Vendor Contact Email Address:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Authorized Name (Printed):** \_\_\_\_\_

<u>Service</u>	<u>Total Cost for Service</u>
Cost Allocation Plan	

## REFERENCES

1. Vendor Name: \_\_\_\_\_

Vendor Contact: \_\_\_\_\_

Vendor Phone Number: \_\_\_\_\_

Vendor Address: \_\_\_\_\_

Type of Project: \_\_\_\_\_

Length of Project: \_\_\_\_\_

2. Vendor Name: \_\_\_\_\_

Vendor Contact: \_\_\_\_\_

Vendor Phone Number: \_\_\_\_\_

Vendor Address: \_\_\_\_\_

Type of Project: \_\_\_\_\_

Length of Project: \_\_\_\_\_

3. Vendor Name: \_\_\_\_\_

Vendor Contact: \_\_\_\_\_

Vendor Phone Number: \_\_\_\_\_

Vendor Address: \_\_\_\_\_

Type of Project: \_\_\_\_\_

Length of Project: \_\_\_\_\_

## GENERAL INFORMATION ON SUBMITTING PROPOSALS

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation.  
Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.
2. **CERTIFICATION:** By executing the proposal, the signer certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.
3. **ORAL EXPLANATIONS:** The State shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
4. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
5. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

**It is desirable that all responses meet the following requirements:**

- All copies are printed **double sided**.
  - All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
  - Unless absolutely necessary, all proposals and copies should **minimize or eliminate use of non-recyclable or non-re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
  - Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.
6. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the State of North Carolina will not reimburse any offeror for any costs incurred prior to award.
  7. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of **(at least 30)** days. Although the contract is expected to be awarded prior to that time, the \_\_\_\_\_ day period is requested to allow for unforeseen delays.
  8. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
  9. **CONFIDENTIALITY OF PROPOSALS:** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing agency, government or private, until after the award of the contract. . Only those communications with the using agency or issuing agency authorized by this RFP are permitted. All offerors are advised that they are not to have any communications with the using or issuing agency during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the contract), unless the State's purchaser contacts the offeror(s) for purposes of seeking clarification. An offeror shall not: transmit to the issuing and/or using agency any information commenting on the ability or qualifications of other offerors to perform the advertised contract and/or the other offerors' proposals and/or prices at any time during the procurement process; or engage in any other communication or conduct attempting to influence the evaluation and/or award of the contract that is the subject of this RFP. Offerors not in compliance with this provision may be disqualified, at the option of the State, from contract award. Only discussions authorized by the issuing agency are exempt from this provision.
  10. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the State when received.
  11. **OFFEROR'S REPRESENTATIVE:** Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

12. **SUBCONTRACTING:** Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.
13. **PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.
14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
15. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When an offeror wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Contract status and Award notices are posted on the Internet at <http://www.pandc.nc.gov/>. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.pandc.nc.gov/protests.pdf> for more information.)
16. **TABULATIONS:** Bid Tabulations will be posted on the City of High Point Purchasing Website at [www.highpointnc.gov/purchasing](http://www.highpointnc.gov/purchasing).
17. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on our Internet web site: <http://www.pandc.nc.gov/>.
- In order to do business with the City of High Point, you will need to register by going to the City of High Point Purchasing website at [www.highpointnc.gov/purchasing](http://www.highpointnc.gov/purchasing).
- The City of High Point Attorney's Office requests that in order to do business with the City of High Point vendors must be registered with the North Carolina Secretary of State. **NC SECRETARY of STATE REGISTRATION:** *If your company is organized (ie: incorporation, LLC, etc.) and you are the SUCCESSFUL bidder, you must be registered with the NC Secretary of State* <http://www.secretary.state.nc.us/Corporations/CSearch.aspx>.
18. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident offerors. The "Principal Place of Business" is defined as the principal place from which the trade or business of the offeror is directed or managed.

## NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
2. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined
3. **INDEPENDENT CONTRACTOR:** The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.
4. **KEY PERSONNEL:** The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Agency's Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified in the Contractor's proposal.
5. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Agency's Contract Administrator. Acceptance of an offeror's proposal shall include any subcontractor(s) specified therein.
6. **PERFORMANCE AND DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, the Agency shall thereupon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined.

In case of default by the Contractor, the State may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State reserves the right to require a performance bond or other acceptable alternative performance guarantees from successful offeror without expense to the State.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

7. **TERMINATION:** The Agency may terminate this agreement at any time by 30 days notice in writing from the Agency to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Agency, become its property. If the contract is terminated by the Agency as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.
8. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice(s) or acceptance of services, whichever is later, or in accordance with any special payment schedule identified in this RFP. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
9. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Agency for the purpose set forth in this agreement.
10. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency.

11. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the State for loss of damage of such property.
12. **COPYRIGHT:** No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
13. **ACCESS TO PERSONS AND RECORDS:** The State Auditor and the using agency's internal auditors shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees or performance).
14. **ASSIGNMENT:** No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:
- Forward the contractor's payment check(s) directly to any person or entity designated by the Contractor, or
  - Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).
- In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.
15. **COMPLIANCE WITH LAWS:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
16. **AFFIRMATIVE ACTION:** The Contractor shall take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
17. **INSURANCE:** During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:
- Worker's Compensation - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is subcontracted, the contractor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.
  - Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability).
  - Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

18. **ADVERTISING:** The offeror shall not use the award of a contract as part of any news release or commercial advertising.
19. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This Request for Proposals, any addenda thereto, and the offeror's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.



20. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the Agency and the Contractor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.
21. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
22. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
23. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
24. **OUTSOURCING:** Any vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the State agency responsible for the contract.

Vendor must give notice to the using agency of any relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the United States.

25. **By EXECUTIVE ORDER 24**, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:
- (1) have a contract with a governmental agency; or
  - (2) have performed under such a contract within the past year; or
  - (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24."

## **SAMPLE** **AGREEMENT FOR SERVICES**

THIS AGREEMENT FOR SERVICES ("the Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the CITY OF HIGH POINT, a North Carolina municipal corporation with a mailing address of P.O. Box 230, High Point, North Carolina 27261 ("the City"), and \_\_\_\_\_, a Corporation authorized to do business in the State of North Carolina, with a mailing address of \_\_\_\_\_ ("the Service Provider").

## SERVICES

WHEREAS, the City desires to engage the Service Provider to provide the services described in the attached **Exhibit A which is the RFP and RFP Response** (“the Services”). The Services include all additional services reasonably implied and inferred therefrom or customarily provided in the performance of services of the nature to be provided by the Service Provider pursuant to the Agreement;

WHEREAS, the Service Provider desires to render the Services, and has the experience, staff and resources to perform the Services;

NOW, THEREFORE, the City and the Service Provider, in consideration of their mutual covenants, hereby agree as follows:

### SECTION I. PROVISION OF THE SERVICES

A. Provision of and Payment for the Services. The Service Provider shall provide the Services consistent with the terms of the Agreement. The City shall pay the Service Provider for the provision of the Services consistent with the terms of the Agreement.

B. Independent Contractor. The Service Provider is an independent contractor. The Service Provider, its employees, subcontractors, suppliers and consultants are not, individually or collectively, to be deemed an employee or employees of the City under any circumstances. The Agreement shall not under any circumstances be construed to make the City and the Service Provider joint venturers, partners or parties to similar relationships with each other.

### SECTION II. RESPONSIBILITIES OF THE SERVICE PROVIDER

A. Service Provider’s Work. The Service Provider shall be responsible for the full provision of the Services, the professional quality and technical accuracy of the Services, the preparation of all reasonably required and customary documentation relating to the Services, and the coordination of all activities relating to the Services.

B. Standard of Care. The Service Provider shall provide the Services in a manner consistent with best practices in the industry with which the Services are associated.

C. Timeliness of Performance. The Service Provider shall provide the Services in a timely fashion consistent with the City’s scheduling requirements. The Service Provider shall provide the Services in accordance with the schedule set forth in **RFP and RFP response**.

D. Compliance with Applicable Law. The Service Provider shall comply with all Federal, State and local laws and ordinances applicable to the Services. The Service Provider shall not discriminate on the grounds of race, color, religion, sex, age, disability or national origin in the performance of the Services. The Service Provider shall at all times comply with all safety and health regulations, standards and codes applicable to the Services.

E. The Service Provider’s Representative. Prior to provision of the Services, the Service Provider shall by written notice to the City designate a representative to act on behalf of the Service Provider with respect to the Agreement and the Services. The Service Provider’s representative’s decisions, agreements and actions relating to

the Agreement and the Services shall be binding upon the Service Provider. If the City requests that the Service Provider designate a different representative to act on behalf of the Service Provider with respect to the Agreement and the Services, the Service Provider will do so within five (5) business days of the Service Provider's receipt of written notice from the City regarding this request. If the Service Provider decides to change its designated representative, the Service Provider will give written notice to the City of its new designated representative.

F. Warranty. The Service Provider fully warrants the Services provided pursuant to the Agreement, and does not disclaim any express or implied warranty potentially applicable to the Services.

G. Bonds. The Service Provider shall provide any payment bond or performance bond required by the City. The City will provide written notice to the Service Provider of the need, if any, to provide payment and/or performance bonds relating to the Services prior to the commencement of the Service Provider's provision of the Services. If the City requests that a payment and/or performance bond be provided by the Service Provider, the required bond or bonds will be provided by the Service Provider prior to the Service Provider's provision of the Services.

### **SECTION III. RESPONSIBILITIES OF THE CITY**

A. Payment to the Service Provider. The City shall make payments to the Service Provider for the Services consistent with the Agreement.

B. The City's Representative. Prior to the Service Provider's provision of the Services, the City shall by written notice to the Service Provider designate a representative to act on behalf of the City with respect to the Agreement and the Services. The City's representative's decisions, agreements and actions relating to the Agreement and the Services shall be binding upon the City. If the City decides to change its designated representative, the City will give written notice to the Service Provider of its new designated representative.

### **SECTION IV. TERM OF THE AGREEMENT**

A. Term. The term of the Agreement is \_\_\_\_\_ from the date designated by the City for the Service Provider to begin provision of the Services ("the Commencement Date").

B. The Commencement Date. The Commencement Date is \_\_\_\_\_.

C. No Automatic Renewal. The Agreement will not be automatically renewed. The City and the Service Provider can agree to continue their contractual relationship with regard to the Services after the expiration of the term, either consistent with the Agreement or otherwise.

### **SECTION V. PAYMENT**

A. Total Payment. The City will pay the Service Provider the total amount of \$\_\_\_\_\_ for the Service Provider's full provision of the Services.

B. Invoices.

1. Timing of Invoices. The Service Provider shall submit invoices to the City in a form acceptable to the City on a periodic basis during the Service Provider's provision of the Services. Invoices will be submitted by the Service Provider to the City no more frequently than once per month.

2. Information Required in Invoices. Each invoice submitted to the City by the Service Provider shall contain sufficient information regarding the work covered by the invoice and the amount charged by the Service Provider for the work covered by the invoice to allow the City to properly review and process the invoice, and to properly include the invoice in any audit related to the Agreement or the Services. Each invoice shall contain a reference to the Agreement sufficient to allow the City to relate the invoice to the Agreement.

3. Submission of Invoices. Invoices shall be submitted by the Service Provider to the City as follows:

- a. Invoices hand delivered or mailed to the City shall be sent to:  
The City of High Point  
Accounts Payable  
P.O. Box 230  
High Point, NC 27260

Invoice Review Process. The City shall have ten (10) calendar days from the City's receipt of an invoice to report any concerns about the invoice to the Service Provider. Any concerns, whether with respect to the form of the invoice or the work covered by the invoice, shall be promptly addressed by the Service Provider to the reasonable satisfaction of the City. The Service Provider shall submit a revised invoice after the City's concerns about an invoice have been addressed. The City shall pay each accurate and properly submitted invoice within thirty (30) calendar days of the City's receipt of the properly submitted invoice.

4. Maintenance of Documents. The Service Provider shall maintain all documents, accounting records, electronically stored information and other evidence pertaining to the Services, and shall make such materials available for inspection by the City or its representatives or agents during the term of the Agreement and for three (3) years from the date of final payment under the Agreement.

## **SECTION VI. TERMINATION**

A. Default. The Agreement may be terminated by either party if the defaulting party fails to materially perform its obligations under the Agreement. With regard to the Service Provider, grounds for termination include, but are not limited to: (i) refusing or failing to provide sufficiently skilled and qualified personnel to perform the Services; (ii) failing in any material respect to perform the Services in a timely fashion; (iii) causing, by any act or omission, the stoppage or delay of or interference with any other work or services being performed or provided by or on behalf of the City; (iv) failing to make payments to subcontractors or suppliers in accordance with the Service Provider's agreements with the subcontractors or suppliers; (v) disregarding any applicable law relating to the provision of the Services; (vi) materially failing to comply with any provision of the Agreement; or (vii) becoming insolvent, having a receiver appointed, or making a general assignment for the benefit of creditors. With regard to the City, grounds for termination include, but are not limited to: (i) failure by the City to make a required payment with ten (10) calendar days of the time specified by the Agreement, provided written notice of non-payment is received by the City from the Service Provider; or (ii) otherwise breaching a material term of the Agreement.

B. Termination for Convenience by the City. The City may terminate the Agreement for the convenience of the City. If the Agreement is terminated for convenience by the City, the Service Provider shall be paid for the portion of the Services satisfactorily provided by the Service Provider through the date upon which written notice of the City's termination is sent to the Service Provider.

C. Notice of Termination/Opportunity to Cure. Written notice to either party of termination of the Agreement shall be provided consistent with the notice provisions of the Agreement. If the termination is based upon a default, the defaulting party shall have ten (10) days, or such longer period established by the terminating party, after receipt of notice to cure the default to the reasonable satisfaction of the non-defaulting party. If the default is not cured in the designated period, the Agreement shall be deemed terminated.

D. Post-Termination Obligations. Upon any termination of the Agreement, the Service Provider shall: (1) promptly discontinue provision of the Services (unless a termination notice from the City directs otherwise); and (2) deliver or otherwise make available to the City all documents, accounting records, electronically stored information and other information accumulated by the Service Provider in the provision of the Services.

E. The City's Post-Termination Provision of the Services. Upon termination of the Agreement, the City may complete the Services required under the Agreement in any manner deemed appropriate by the City.

## **SECTION VII. INDEMNIFICATION**

A. General Indemnification. The Service Provider shall indemnify, hold harmless and defend the City, its employees, agents and representatives, from and against any and all claims or damages directly or indirectly arising out of or resulting from or related to the Service Provider's provision of the Services.

B. Intellectual Property Indemnification. If any aspect of the Services provided by the Service Provider pursuant to the Agreement becomes, or is likely to become, the subject of any claim, suit or proceeding arising from or alleging facts that if true would constitute infringement, misappropriation or other violation of any patent, copyright, trademark or other intellectual property rights of a third party, the Service Provider shall at its own expense secure for the City the right to continue use of the materials or services at issue, or replace or modify the materials or services at issue to make them non-infringing. The Service Provider shall also fully indemnify, hold harmless and defend the City and its employees, agents and representatives, from and against any and all claims or damages directly or indirectly arising out of or resulting from or related to any alleged infringement, misappropriation or other violation of any patent, copyright, trademark or other intellectual property rights of a third party.

## **SECTION VIII. INSURANCE**

A. Types and Amounts of Insurance. The Service Provider shall, at its own cost and expense, procure and maintain, and cause all subcontractors and suppliers to procure and maintain, in full force and effect at all times from the Commencement Date of the Agreement until three (3) years after completion of the Service Provider's provision of the Services, the following insurance coverages:

1. Worker's compensation insurance in statutory limits required by applicable law, and employer's liability insurance in an amount not less than \$500,000.00 each accident, \$500,000.00 disease each employee and \$500,000.00 disease policy limit;

2. Commercial general liability insurance with a combined single limit for personal injury (including bodily injury and death) and property damage (including loss of use) of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 products and completed operations aggregate and \$2,000,000.00 general aggregate. Such coverage shall include the indemnification obligations of the Service Provider under this Agreement;

3. Commercial vehicle liability insurance for any vehicle (including owned, hired, rented and non-owned vehicles) with a combined single limit for each accident of not less than \$1,000,000.00;

4. Umbrella or excess liability insurance on a “following form” basis, which shall provide coverage in excess of the coverage required to be provided by the Service Provider for employer’s liability insurance, commercial general liability insurance and commercial vehicle liability insurance coverage, with limits of not less than \$5,000,000.00 combined single limit each occurrence and \$5,000,000.00 aggregate limits; and

5. Professional liability or errors or omissions insurance covering all liability arising out of or based upon any negligent design, engineering, planning, consulting or other provision of the Services, with a limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 annual aggregate.

B. The City as Additional Insured. The City, its employees, agents and representatives shall be listed as an additional insured on all insurance coverages procured by the Service Provider pursuant to the Agreement.

C. Certificates of Insurance. The Service Provider prior to the Service Provider’s provision of the Services will provide properly completed certificates of insurance showing the existence and effective dates of all coverages required under the Agreement. The required form certificates of insurance are included in the Agreement as an **Exhibit**.

## **SECTION IX. DISPUTE RESOLUTION**

A. Negotiation. In the event that any claim, dispute or controversy arising out of or relating to the Agreement (including a default, termination or any invalidity thereof, and whether arising out of tort or contract) cannot be resolved informally within ten (10) calendar days after the dispute arises, either party may give written notice to the other party requesting that representatives of the parties’ senior management meet in an attempt to resolve the dispute. Each such representative shall have full authority to resolve the dispute and shall meet at a mutually agreeable time and place within fifteen (15) calendar days (or such longer time, if agreed by the parties), after receipt by the non-notifying party of such notice. The meeting between management representatives can take place by telephone.

B. Litigation. Any dispute not resolved through negotiation shall be decided by litigation. Litigation of any dispute shall be brought exclusively in a Federal or State court in Guilford County, North Carolina. Each party hereby consents to personal jurisdiction in any legal action brought in any State or Federal court in Guilford County, North Carolina. Each party further consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified U.S. mail, postage prepaid to the party at its notice address specified in the Agreement, or by such other method complying with the rules and procedures of such courts.

C. Continuation of Performance of the Services During Dispute. Notwithstanding any dispute and provided that performance is requested by the City, it shall be the responsibility of the Service Provider to continue to provide the Services in conformity with the Agreement during the pendency of the dispute. The City shall, subject to its right to withhold amounts to cover damages allegedly caused by the Service Provider's default, continue to pay the Service Provider undisputed amounts in accordance with the Agreement. This paragraph shall not apply in the event of a termination of the Agreement by either party.

## **SECTION X. NOTICE**

Any notice given pursuant to the Agreement shall be in writing and signed by a representative of the party giving such notice. Written notice may be: (a) hand-delivered; (b) sent by facsimile transmission; or (c) sent by overnight courier, messenger or registered or certified U.S. mail, postage prepaid, return receipt requested. Written notice shall be delivered to the City and the Service Provider at the following addresses:

### Notice to the City:

#### Address for hand-delivery or mailing:

The City of High Point  
Accounts Payable  
P.O. Box 230  
High Point, NC 27260

### Notice to the Service Provider:

#### Address for hand-delivery or mailing:

A notice shall be deemed received by the party to whom it is sent: (a) in the case of hand-delivery or delivery by overnight courier messenger or registered or certified U.S. mail, postage prepaid, return receipt requested, on the date of delivery of the notice to the party; and (b) in the case of facsimile transmission, on the date of the transmission by the sending party.

The addresses listed above with regard to the receipt of notice may be changed at any time by a party through the provision of notice of the change in accordance with this Section. Any change shall become effective on the date the notice of the change is deemed received by the party to whom it is sent.

## SECTION XI. MISCELLANEOUS

A. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina (without giving effect to the principles thereof relating to conflicts of law).

B. Successors and Assigns. The Agreement shall be binding upon the parties, their successors and permitted assigns. Neither the City nor the Service Provider shall assign, sublet or transfer any interest in the Agreement without the prior written consent of the other party, which may be withheld for any reason.

C. Minor Changes in the Services. The City and the Service Provider agree that the City is entitled to request minor changes in the Services to be provided by the Service Provider under the Agreement, and that the Service Provider will provide such revised services requested by the City. Compensation relating to any such revision shall be based upon agreement between the City and the Service Provider, or through the claim resolution process set forth herein. The Service Provider may not withhold performance of a minor requested change to the Services on the ground that an agreement regarding compensation relating to the change has not been reached.

Any changes or modifications of the Services, as well as any other revisions to the Agreement, shall be reduced to writing, dated, executed and made part of the Agreement.

D. Disclosure. The Service Provider agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or the provision of the Services, or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished with regard to the Agreement or the provision of the Services, without first notifying the City and securing its consent in writing. The City may withhold its consent for such disclosure for any reason. The Service Provider also agrees that it shall not publish, copyright or patent any of the data furnished to it in relation to the Agreement.

E. Conflict. In case of a conflict between the provisions of the Agreement and the provisions of any attachment or other document referenced by or incorporated into the Agreement, the provisions of the Agreement shall prevail. Any terms and conditions or similar provisions submitted by the Service Provider shall not be part of the Agreement unless agreed upon in writing by the City. If such terms and conditions or other provisions are submitted by the Service Provider and agreed upon by the City, the provisions of the Agreement shall prevail in the event of a conflict between the provisions of the Agreement and the terms and conditions or other provisions submitted by the Service Provider.

F. Captions. The captions contained in the Agreement are for convenience and reference only, and do not define, describe, extend or limit the scope or intent of the Agreement or the scope or intent of any provision contained herein.

G. Severability. The invalidity of one or more phrases, sentences, clauses or sections in the Agreement shall not affect the validity of the remaining portions of the Agreement, so long as the material purpose of the Agreement can be determined and effectuated.



H. No Waiver. Any failure by either party to enforce any of the provisions of the Agreement or to require compliance with any of its terms at any time during the term of the Agreement shall in no way affect the validity of the Agreement, or any part hereof, and shall not be deemed a waiver of the right of such party thereafter to enforce any such provision.

I. Counterparts. The Agreement may be signed in any number of counterparts, and each counterpart shall represent a fully executed original as if signed by each of the parties. Facsimile signatures shall be deemed as effective as original signatures.

*Signature Page for Incorporated Firms*

IN WITNESS WHEREOF, the City and the Service Provider have caused the Agreement to be executed in 6 original copies on the day and year first above written by their duly authorized representatives.

\_\_\_\_\_  
*Service Provider*

By:\_\_\_\_\_  
*President/Vice President*

\_\_\_\_\_  
*Name above (Typed or Printed)*

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City/State*

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*ATTEST*

In witness whereof, said corporation has caused this instrument to be executed by its President or Vice President and attested by its Secretary or Asst. Secretary this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
*Corporate Name*

(SEAL)

By:\_\_\_\_\_  
*President/Vice President (Signature)*

Attest:\_\_\_\_\_  
*Secretary/Asst. Secretary (Signature)*

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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that  
\_\_\_\_\_ personally came before me this day and  
acknowledge that he/she is the Secretary of \_\_\_\_\_, a corporation organized in the state of  
\_\_\_\_\_ and that by authority duly given and as the act of the corporation, the foregoing  
instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its  
Secretary.

Witness my hand and official seal or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_(Notary Public)

(SEAL/STAMP)

My Commission Expires: \_\_\_\_\_

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CITY OF HIGH POINT, NORTH CAROLINA

*The City*

P O Box 230, High Point, NC 27261

*Address*

\_\_\_\_\_  
*Lisa Vierling, City Clerk*

By:\_\_\_\_\_

*Gregory Demko, City Manager*

**APPROVAL BY CITY ATTORNEY**

Approved as to form and legality:

\_\_\_\_\_  
JoAnne L. Carlyle, City Attorney

Date: \_\_\_\_\_

**APPROVAL BY FINANCE OFFICER**

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Jeffrey A. Moore, Director of Financial Services

Date: \_\_\_\_\_